

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6064

PETITION OF JOHN MCPHERSON

(Hearings held April 20, 2005 and May 4, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, June 17, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a) and 59-C-1.323(b)(2). The existing single-family dwelling requires a variance of three (3) feet as it is within twenty-seven (27) feet of the front lot line and a variance of 6.50 feet as it is within 18.50 feet of the rear lot line. The petitioners propose the construction of a one-story addition that requires a variance of 8.50 feet as it is within 16.50 feet of the rear lot line and a variance of seven (7) feet as it is within twenty-three (23) feet of the front lot line (Sangamore Road). The required front lot line setback is thirty (30) feet and the required rear lot line setback is twenty-five (25) feet.

Robert Beug, the petitioner's agent, appeared with Jennifer McPherson, the property owner, at the public hearing.

The subject property is Lot 97, Block 14, Glen Echo Heights Subdivision, located at 6001 Massachusetts Avenue, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00506803).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 16 x 5 foot one-story addition.
2. The petitioner testified that the lot on which the existing structure was built was platted in 1948, and that the lot was subdivided and replatted in 1963. The petitioner testified that the proposed addition will be built over an existing stoop and stairway, and that the enclosed portion of the addition would extend the footprint of the existing stoop and stairway by approximately one foot [running the length of the addition]. The petitioner's lot is 7,996 square feet.

3. Mr. Beug testified that the petitioner's lot fronts on three roads, one of which is unimproved. Mr. Beug testified that the lot is oddly shaped, in that it is bounded by six distinct line segments, none of which are parallel or equal in length, and that the lot is uneven and has varying degrees of shallowness. Mr. Beug testified that the total buildable area on the lot is 1,588 square feet, or about 20% of the total area of the lot.
4. After a review of the area zoning vicinity map [Exhibit No. 7], the Board determined that while the petitioner's application sought variances from the setbacks specified for the R-90 Zone, the property was in fact located in the R-60 Zone.
5. After a review of Section 59-B-5.3 of the Zoning Ordinance [One-family dwelling], the Board found that this section applies to the variances requested for the existing single-family dwelling. Therefore, the existing single-family dwelling would not require variances. Section 59-B-5.3 states "Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is no a non-conforming building."
6. After a review of Section 59-C-1.323(a) of the Zoning Ordinance [Minimum Setback from street], the Board determined that the required front lot line setback is twenty-five (25) feet for the R-60 Zone, and that the required front lot line variance is two (2) feet. Also, after review of Section 59-C-1.323(b)(2) of the Zoning Ordinance [Setback from adjoining lot (2) rear], the Board determined that the required rear lot line setback for the R-60 Zone is twenty (20) feet, and that the required rear lot line variance is 3.50 feet.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot was legally platted in 1948. As such, any alteration, renovation or enlargement of the structure on the lot is subject to the provisions of the Zoning Ordinance in effect at that time (the 1941 Zoning Ordinance), except that the current established building line setback must be used. See Section 59-B-5.3 of the Montgomery County Zoning Ordinance. The established building line setback is a front line setback. Because the petitioner's property is located on a corner lot, it is subject to established building line setbacks on two sides. See Section 59-A-5.33.

The petitioner's lot is not small for the R-60 Zone, but the lot is irregularly shaped. The irregular shape of the lot and the application of the established building line requirement severely reduce the buildable area of the petitioner's lot. The application of the zoning regulations would result in a buildable area that is approximately twenty percent of the total area of the lot. This is significantly less (more than forty percent less) than the thirty-five percent coverage allowed by the Zoning Ordinance in the R-60 Zone.

The Board finds that these are exceptional circumstances peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variances requested for the construction of a one-story addition are the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the new dwelling will not materially change the view from the neighboring properties and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of two (2) feet from the required twenty-five (25) foot front lot line setback for the construction of a one-story addition and of 3.5 feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway, and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 17th day of June, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.